

JAMES D. PETRUZZI (SBN 15853280)  
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Attorneys for Plaintiff LARRY JUNKER

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

<b>LARRY G. JUNKER</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>CIVIL ACTION NO. 3:07-cv-5094</b>
	§	
<b>v.</b>	§	
	§	
<b>HDC CORPORATION</b>	§	<b>JURY TRIAL DEMANDED</b>
	§	
<b>Defendant.</b>	§	
	§	
	§	
	§	

**DECLARATION OF JAMES D. PETRUZZI IN**  
**SUPPORT OF REQUEST FOR DEFAULT JUDGMENT**

I, James D. Petruzzi declare:

1. I am an attorney licensed to practice law in the State of Texas and am admitted before this Court as attorney of record for Plaintiff Larry G. Junker. I know the following facts of my own personal knowledge, and if called upon, would and could competently testify thereto.
2. After this suit was filed, but before it was served, I received a telephone call from Tim Duvall, President of HDC Corporation. He advised me that HDC had stopped

selling the infringing Introducer Kits at or about the time he was advised of an injunction entered in a previous suit against the manufacturer, Galt Medical, in December 2003. He emailed me shortly after our phone call setting forth the total amount of Tear Away Sheath Introducer Kits that his company sold. Attached here as Exhibit A is a true and correct copy of an October 10, 2008 email from Mr. Duvall to me.

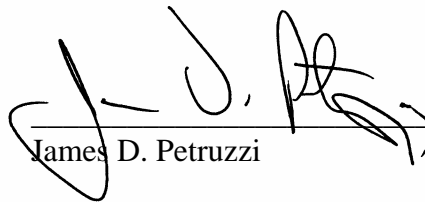
3. In that email, HDC states that it sold 1182 Introducer Kits at a costs of \$20.00 for total income of 23,640.00. At no time have we received any documentation or data identifying the costs associated with these sales.

4. In prosecuting this litigation, Plaintiff was required to hire patent counsel. Mason & Petruzzi has been Mr. Junker's regular patent counsel and I was primarily responsible for this litigation, in part, because I am admitted in the Northern District of California. I am a 1984 graduate of Boalt Hall Law School and have been litigating patent, trademark and copyright matters for over 20 years. My regular billing rate on this case was \$300-\$325 per hour which is somewhat below what is customarily charged for this type of litigation in California and Texas. In the course of this suit, I billed Mr. Junker \$3,643.75 in connection with preparing and filing the suit and performing the required tasks to obtain a judgment in the case. The time expended in this case was necessary and reasonable. Attached hereto as Exhibit B is a true and correct copy of a summary of the billing for Mr. Junker.

5. To calculate pre-judgment interest, I consulted the internet to determine the annual prime rate for 2004 through 2008, using the January listed percentage for each year. The historical annual prime rates for January 2004, 2005, 2006 and 2007 were 4.00%, 5.25%, 7.26 and 8.25%, respectively. Multiplying the total amount of damages

by each interest amount yields interest of \$945.60, \$1241.10, \$1716.26 and \$1950.30 for each year, for a total interest calculation of \$5,853.26. Attached hereto as Exhibit C is a chart from [www.moneycafe.com](http://www.moneycafe.com) setting forth historical prime rates for the beginning of each month from 1998 through 2008.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2d day of April, 2008 at Houston, Texas



James D. Petruzzi

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2008 I electronically filed the foregoing DECLARATION OF JAMES D. PETRUZZI with the clerk of court for the U.S. District Court, Northern District of California, using the electronic case filing system of the court. The following attorneys of record for Defendant have consented in writing to accept notice as service of this document by electronic means and are being served by a "Notice of Electronic Filing" sent by the electronic case filing ("ECF") system:

[n/a].

A copy of the foregoing proposed judgment was mailed certified mail, return receipt requested to HDC Corporation, 628 Gibraltar Ct. Milpitas, CA 95035.

/s James D. Petruzzi

James D. Petruzzi

**Jim Petruzzi**

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**From:** tduvall@hdccorp.com  
**Sent:** Wednesday, October 10, 2007 12:10 PM  
**To:** JPetruzzi@MasonPetruzzi.com  
**Cc:** RMason@MasonPetruzzi.com  
**Subject:** Larry Junker v HDC

James,

It was good talking to you on the phone Monday regarding your filling against HDC in the related matter of Larry's patent with Galt. As was discussed with you HDC substituted this Tear Away in its products for a very brief time frame and returned the disputed design Tear Away to Galt after being informed of the Lawsuit by Larry's attorney. HDC willingly discontinued the use of this component when we were knowledgeable of a possible patent infringement.

I have analyzed sales that did take place and here is what I found. HDC used 1182 of the Introducers in its Introduction Kits that were sold with its Chemo Ports and Chemo Cath products. The kit cost \$20.00 and had a margin of 44.5%. The Tear Away cost \$5.15 and the margin associated with it was \$4.12. Total margin realized by HDC from these sales were \$4869.84.

I think you may now realize my surprise in why this matter was filed against our small company. I am sure there are bigger fish in the pond.

Let me know your thoughts.

Tim Duvall  
President  
HDC, Corporation

EXHIBIT A

**Mason & Petruzzi**  
 402 Carillon Towers West  
 13601 Preston Road  
 Dallas, TX 75240

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Larry G. Junker  
 c/o Umbra Medical Corp.  
 8930 E. Roan Dr.  
 Inverness, FL 34450

Professional Services

10/1/2007	Prepare and file complaint on patent infringement HDC Corporation	1.5	450.00
10/8/2007	Telephone call with HDC President regarding suit and settlement posture; email client regarding same	.25	75.00
1/6/2008	Prepare notice of default	1.0	300.00
1/11/2008	Review client email and respond to same	.25	75.00
2/8/2008	Prepare email to client regarding default; revise notice letter to potential targets	.25	81.25
2/19/2008	Prepare case management conference statement	1.25	406.25
2/29/2008	Attend status conference hearing before the Court, prepare draft of motion for default judgment	1.25	406.25
3/4/2008	Prepare request for default damages; research damages for design patent and evidentiary requirements	2.0	650.00
3/24/2008	Revise request for default judgment; prepare proposed order; research interest calculation	2.0	650.00
4/02/2008	Revise and finalize request for default judgment	2.0	\$650.00
	Total For professional services rendered		\$3,643.75

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**Tax ID # 75-2529567**  
**(713) 840-9993**

EXHIBIT B

March 25, 2008



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**Prime Rate****Fed Funds Target Rate****1 Year Treasury (CMT)****12 Month Treasury Avg (12MTA)**

**LIBOR - 1 Month | 3 Month | 6 Month | 1 Year**

**11th District Cost of Funds Index (COFI)****Certificates of Deposit Index (CODI)****Cost of Savings Index (COSI)****Comparison Charts**

Ads by Google

**Prime Rate**

[Historical Graph](#) | [Historical Chart](#) | [Other Rates/Indexes](#) | [Add this Page to Your Favorites \(click here\)](#)

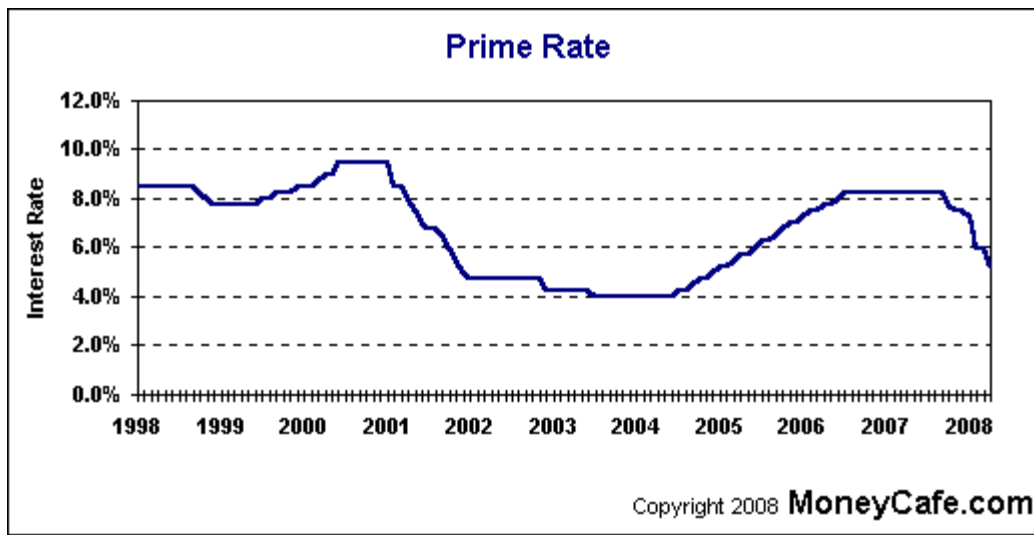
The last reported rate is: **5.25 %**

(Effective since March 18, 2008)

What is the Prime Rate? The Prime Interest Rate is the interest rate charged by banks to their most creditworthy customers (usually the most prominent and stable business customers). The rate is almost always the same amongst major banks. Adjustments to the prime lending rate are made by banks at the same time; although, the prime rate does not adjust on any regular basis. The Prime Rate is usually adjusted at the same time and in correlation to the adjustments of the [Fed Funds Rate](#). The rates reported below are based upon the prime rates on the first day of each respective month.

**Historical Graph**

EXHIBIT C



### Historical Chart

<b>Prime Rate</b>											
<b>Month/Day</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>Jan 1</b>	8.50%	7.75%	8.50%	9.50%	4.75%	4.25%	4.00%	5.25%	7.25%	8.25%	7.25%
<b>Feb 1</b>	8.50%	7.75%	8.50%	8.50%	4.75%	4.25%	4.00%	5.25%	7.50%	8.25%	6.00%
<b>Mar 1</b>	8.50%	7.75%	8.75%	8.50%	4.75%	4.25%	4.00%	5.50%	7.50%	8.25%	6.00%
<b>Apr 1</b>	8.50%	7.75%	9.00%	8.00%	4.75%	4.25%	4.00%	5.75%	7.75%	8.25%	
<b>May 1</b>	8.50%	7.75%	9.00%	7.50%	4.75%	4.25%	4.00%	5.75%	7.75%	8.25%	
<b>Jun 1</b>	8.50%	7.75%	9.50%	7.00%	4.75%	4.25%	4.00%	6.00%	8.00%	8.25%	
<b>Jul 1</b>	8.50%	8.00%	9.50%	6.75%	4.75%	4.00%	4.25%	6.25%	8.25%	8.25%	
<b>Aug 1</b>	8.50%	8.00%	9.50%	6.75%	4.75%	4.00%	4.25%	6.25%	8.25%	8.25%	
<b>Sep 1</b>	8.50%	8.25%	9.50%	6.50%	4.75%	4.00%	4.50%	6.50%	8.25%	8.25%	
<b>Oct 1</b>	8.25%	8.25%	9.50%	6.00%	4.75%	4.00%	4.75%	6.75%	8.25%	7.75%	
<b>Nov 1</b>	8.00%	8.25%	9.50%	5.50%	4.75%	4.00%	4.75%	7.00%	8.25%	7.50%	
<b>Dec 1</b>	7.75%	8.50%	9.50%	5.00%	4.25%	4.00%	5.00%	7.00%	8.25%	7.50%	
Copyright 2008 <b>MoneyCafe.com</b>											

Source: Federal Reserve Board

A complete history of the specific dates on which the Prime Rate changed are found on the Federal Reserve Bank of St. Louis website at <http://research.stlouisfed.org/fred2/data/PRIME.txt>

Reasonable efforts are made to maintain accurate information. However, information could contain errors or inaccuracies and is presented without

EXHIBIT C